

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 13TH JUDICIAL CIRCUIT
GRAND TRAVERSE COUNTY

BLARNEY CASTLE OIL COMPANY

Plaintiff,

Case No. 06-25507 - CH(R)

v

HON. PHILLIP E. RODGERS, JR. (P29082)

STEVEN E. CHESTER AS DIRECTOR OF
THE MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

CONSENT JUDGMENT

Defendant.

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Director of the Michigan DEQ

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MAR 06 2009

with GTC Circuit Court Records

A TRUE COPY
LINDA COBURN
Grand Traverse County Clerk

MAR 06 2009

By Sharon A. Johnson
Deputy County Clerk

The parties to this Consent Judgment are the Michigan Department of
Environmental Quality ("MDEQ") and Blarney Castle Oil Company ("Plaintiff").

The parties agree that settlement of this action is in the public interest and entry of
this Consent Judgment is the most appropriate means of resolving the disputed issues and

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claims raised in the above-captioned matter as well as matters raised in the December 18, 2007 demand letter, a copy of which is attached and incorporated herein. The parties agree to and shall be bound by the requirements of this Consent Judgment.

The entry of this Decree by Defendant is not an admission of liability with respect to any factual allegations or legal conclusions set forth in the Complaint.

It is ordered, adjudged, and decreed:

I. JURISDICTION

1.1 This Court has subject matter jurisdiction under the *Natural Resources and Environmental Protection Act* ("NREPA") 1994 P.A. 451 *as amended*, Part 201 and Part 213, specifically MCL 324.20137 (hereafter "Section 20137" or "§20137") and §21323.

Venue is proper in the 13th Judicial Circuit Court for Grand Traverse County under §20137(3).

1.2 This Court retains jurisdiction over the Parties and subject matter of this action to enforce this Consent Judgment.

II. STATEMENT OF PURPOSE

2.1 In entering into this Consent Judgment, the mutual objective of Parties is to:

(a) Resolve the past costs demanded in the December 18, 2007 Demand Letter as provided herein;

(b) Resolve civil fines assessed under Section 21323(1)(d) and Section 20137(1)(f) of the NREPA in the December 18, 2007 Demand Letter;

(c) Resolve the pending litigation and the issues concerning the lien currently on the Dan's Service property; and

- (d) Agree to the dismissal of the appeal pending in the Michigan Court of Appeals under Court of Appeals Docket No. 279579 by executing the Stipulation and Order set forth in Attachment A after entry of this Consent Judgment;
- (e) Minimize litigation.

III. COMPLIANCE WITH STATE AND FEDERAL LAWS

3.1 All actions required to be taken pursuant to this Consent Judgment must be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws, and rules and regulations, including, but not limited to Parts 201 and 213 of the NREPA.

IV. FINES, COSTS, AND PENALTIES

4.1 The Plaintiff agrees to pay the MDEQ the sum of one hundred thousand dollars (\$100,000) to resolve the one hundred twenty six thousand five hundred sixty nine and ninety cents (\$126,569.90) in past costs demanded by the Demand letter dated December 18, 2007. The Plaintiff shall pay the \$100,000 in \$20,000 monthly installments for five months (Installment Payments), beginning within 45 days of the effective date of this Consent Judgment and continuing every 30 days thereafter. Plaintiff's failure to make any installment payments by its due date shall result in that installment payment being subject to interest at the rate specified in Section 20126a(3) until that payment is made in full including any accumulated interest. Payment shall be made in accordance with subparagraph 4.4. The remaining demanded past costs of \$26,569.90 (Past Costs) and \$27,250.00 in demanded civil penalties (Civil Penalties) shall be tolled, and shall not begin nor continue to accrue with respect to this site unless and until such time as MDEQ provides notice that Blarney Castle Oil Co. has failed to comply with the terms of this Consent Judgment and the resolution of the non compliance.

- 4.2 The Plaintiff agrees that failure to:
 - a.) Make an Installment Payment within the time provided in Section 4.1;

b.) Submit a Part 213 compliant *Corrective Action Plan* ("CAP") as part of a *Final Assessment Report* ("FAR") or a *Closing Report* ("CR") within 365 days of the effective date of this Consent Judgment; or

c.) Implement a CAP within 730 days of the effective date of this Consent Judgment

requires payment of the past costs and civil penalties held in abeyance as provided in Section 4.1. Failure to pay the penalty held in abeyance within 45 days of written notification from the MDEQ, which references this Consent Judgment and the Plaintiff's failure to comply with 4.2.a, 4.2.b. or 4.2.c, will result in the amount being subject to interest at the rate specified in Part 201 Section 20126a(3) of the NREPA. This payment shall be made pursuant to 4.4.

4.3 The Plaintiff agrees not to contest the:

a.) legality of the past costs and civil fines demanded by the Demand Letter; or

b.) legality of the past costs and civil fines held in abeyance per Paragraph 5.1 of this Consent Judgment.

Plaintiff may dispute the factual basis for MDEQ's assertion that they have failed to comply with Part 201 or 213 if the MDEQ petitions the Court for enforcement of Paragraph 4.2 of this Consent Judgment. For purposes of this Consent Judgment only, resolution of any disputes brought in Court pursuant to the preceding sentence shall be in accordance with Section 631 of the *Revised Judicature Act* (RJA). As set forth in paragraphs 9.4 and 9.6, a claim by MDEQ for payment of the past costs and civil penalties pursuant to this paragraph does not limit any other enforcement authority of MDEQ.

4.4 The Plaintiff agrees to pay all funds due pursuant to this agreement by certified check made payable to the State of Michigan - Environmental Response Fund and delivered to:

Revenue Control Unit

Financial and Business Services Division
Department of Environmental Quality
525 West Allegan Street, 5th Floor, South Tower
P.O. Box 30657
Lansing, Michigan 48909-8157.

To ensure proper credit, all payments made pursuant to this Consent Judgment must include the Dan's Service Station, Project No. U11168 and Settlement ID Number RRD2237 identified on the certified check.

V. REPORTING

5.1 All correspondence and submittals are to be made to:

Mr. James Ferritto, Project Manager
MDEQ Remediation and Redevelopment Division
Cadillac District Office
120 West Chapin Street
Cadillac, Michigan 49601-2158
Telephone (231) 775-3960 extension 6310
Email: ferritoJ@michigan.gov

5.2 The Plaintiff shall verbally report any violation(s) of the terms and conditions of this Consent Judgment to MDEQ staff, at the postal address specified in 5.1, or the District Supervisor for that office, no later than the close of the next business day following identification of such violation(s) and shall follow such verbal notification with a written report within five (5) business days following identification of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). Failure to report any violation(s) of this Consent Judgment constitutes a violation of the Consent Judgment and Plaintiff may be subject to payment of the remaining past costs and civil penalties held in abeyance as provided under Paragraph 4.1.

5.3 No informal advice, guidance, suggestions, or comments by the MDEQ will be construed as relieving the Plaintiff of their obligation to obtain written approval, if and when required, by this Consent Judgment.

VI. MODIFICATIONS

6.1 The deadlines contained in this Consent Judgment may only be modified according to the terms of this Section.

6.2 The deadlines provided in Paragraph 4.1 of this Consent Judgment may be extended in writing at the sole discretion of the MDEQ, RRD, Part 213/215 Enforcement Unit Chief, in consultation with the RRD, Compliance and Enforcement, Section Chief.

6.3 The deadlines provided in Paragraph 4.2 of this Consent Judgment may be extended in writing at the sole discretion of the MDEQ, RRD, Cadillac District Supervisor, or his successor in consultation with the RRD, Compliance and Enforcement, Section Chief.

VII. ACCESS

7.1 The Plaintiff shall allow any MDEQ employee, agent, authorized representative or contractor, upon presentation of proper credentials, to enter upon the premises of the facility and any associated properties at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Judgment to the extent access to the facility and any associated properties is owned, controlled by, or available to the Plaintiff. This paragraph in no way limits the authority of the MDEQ to conduct tests and inspections pursuant to the NREPA, and the rules promulgated there under, or any other applicable statutory provision.

VIII. DISCHARGE OF LIEN

8.1 MDEQ will file a discharge of the lien (Assessment Number 11-05-28000333-S062) recorded on December 15, 2005 within 14 business days after the date it issues a Notice of Termination pursuant to paragraph 12.1.

8.2 The discharge of the lien by MDEQ shall not be construed as a waiver of any right of the DEQ to pursue available common law actions or remedies, or statutorily based actions or remedies, including all actions or remedies permitted under the NREPA.

IX. GENERAL PROVISIONS

9.1 The entry of this Consent Judgment resolves all issues set forth in the Complaint.

9.2 With respect to any violations of Parts 201 and 213 the MDEQ expressly reserves, and this Consent Judgment is without prejudice to, all rights to take administrative action or pursue any other remedies to which it is entitled pursuant to any applicable authority for any failure on the part of the Plaintiff to comply with the requirements of Parts 213 or 201 or this Consent Judgment.

9.3 This Consent Judgment in no way affects the Plaintiff's responsibility to comply with any other applicable state, federal, or local laws or regulations.

9.4 The MDEQ reserves all of its enforcement rights under Parts 31, 201 and 213, including but not limited to, seeking the performance of response activities, pursuit of response activity costs, the assessment of late report penalties, and civil penalties for any failure to comply with Parts 201 and 213 or Paragraphs 4.2, and 5.2, regardless of whether payment under Paragraph 4.1 is made.

9.5 The MDEQ does not assume any liability by entering into this Consent Judgment. This Consent Judgment shall not be construed as an indemnity by the MDEQ for the benefit of the Plaintiffs or any other person.

9.6 The MDEQ expressly reserves all of its rights and defenses pursuant to any available legal authority to enforce this Consent Judgment.

9.7 In addition to, and not as a limitation of any other provision of this Consent Judgment, the MDEQ retains all of its authority and reserves all of its rights to perform, or contract to have performed, any response activities or corrective actions that the MDEQ determines are necessary.

9.8 After the Effective Date of this Consent Judgment, if the MDEQ initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, assessment and recovery of civil fines or administrative penalties, or other appropriate relief relating to the facility, the Plaintiff agrees not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim splitting, or that are based upon a defense that contends any claims raised by the MDEQ or the Michigan Department of Attorney General in such a proceeding were or should have been brought in this case.

X. PARTIES BOUND

10.1 This Consent Judgment shall apply to and be binding upon the Plaintiff and the MDEQ and their successors and assigns. Any change in ownership, corporate, or legal status of the Blarney Castle Oil Company, including but not limited to, any transfer of assets, or of real or personal property, shall not in any way alter the Plaintiff's responsibilities under this Consent Judgment.

XI. TERMINATION

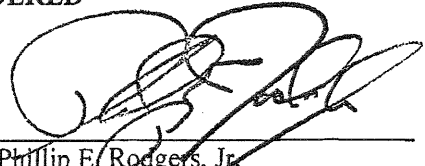
11.1 This Consent Judgment shall remain in full force and effect until terminated by a written Notice of Termination issued by the MDEQ once the obligations in Section, 4.1 and 4.2 are satisfied or by Order of the Court.

XII. EFFECTIVE DATE

12.1 Under MCR 2.602(A)(2) the date the Court signs this Consent Judgment is the effective date. All dates for performing obligations under this Consent Judgment

shall be calculated from the Effective Date. For this Consent Judgment, "day" means a calendar day unless otherwise noted.

IT IS SO ORDERED


Phillip E. Rodgers, Jr.
Circuit Judge 3-06-09

Signed on ~~November~~ ^{XXXXXXXX} 06, 2008⁹
March

Pursuant to MCR 2.119(D)(1)(b), Plaintiff Blarney Castle Oil Co., Inc. waives notice and hearing on the entry of the above Consent Judgment.

For Plaintiff Blarney Castle Oil Co., Inc.

WARNER NORCROSS & JUDD, LLP



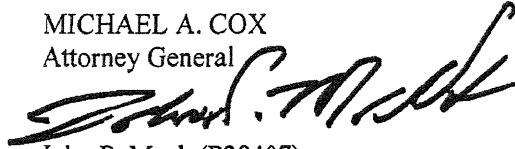
Kenneth W. Vermeulen (P43241)
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Telephone (616) 752-2164
Email: vermeulen@wnj.com
-Attorneys for Plaintiff

^{JANUARY}
Dated: ~~November~~ 30, 2008⁹

Pursuant to MCR 2.119(D)(1)(b), Defendant Michigan Department of Environmental Quality waives notice and hearing on the entry of the above Consent Judgment.

For Defendant Michigan Department of
Environmental Quality

MICHAEL A. COX
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Dated: ~~November~~ _____, 2008 **9**
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